

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DARRYL ORRIN BAKER,

Plaintiff,

VS.

UNITED STATES OF AMERICA,

Respondent.

CIVIL ACTION NO. # 05-147-ERIE

HONORABLE DISTRICT COURT JUDGE

SEAN J. MCLAUGHLIN

REQUEST LEAVE TO FILE A NOTICE
OF APPEAL PURSUANT TO FED. RULE
OF APPELLATE PROCEDURE RULE 3(a)
RULE 4(a)-4(c)

NOW COMES, the Plaintiff Darryl Orrin Baker, (hereinafter "PLAINTIFF"), and proceeding pro-se, and respectfully moves this Honorable Court for Leave to File a Notice of Appeal to the Third Circuit for review, because this Honorable Court dismissed the Plaintiff claims Pursuant to Fed. Rule Civ. P. 12(b)(6) and 12(b)(1) and 56(c). The Plaintiff request leave for the reasons that follow:

(1) That this Honorable Court issued it's Order dated December 14, 2006, and adopted the Report and Recommendation of the Magistrate Judge. See (attachment 1)

(2) That the Plaintiff filed a Motion for Leave to file a Rule 59(e) Motion to Alter or Amend Judgment Granting the United States, Defendant's Motion for Summary Judgment and this Honorable Court denied this Motion by Order dated January 8, 2007. See (attachment 2)

U.S. DISTRICT COURT
ERIE

07 JAN 22 PM 2:37

**TITLE III. APPEAL FROM A JUDGMENT OR
ORDER OF A DISTRICT COURT**

RULE 3. (a) Filing the Notice of Appeal

- (1) An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d).

Rule 4. Appeal as of Right-When Taken

(a) Appeal in a Civil Case.

(1) Time for filing a Notice of Appeal

- (A) In a civil case, except as provided in rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.

4(c) Appeal by an inmate confined in an institution.

- (1) If an inmate confined in an institution file a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this Rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first class postage has been prepaid.

Therefore, the Plaintiff request that all documents, briefs, and motions, be forwarded to the Third Circuit for review because this Honorable Court no longer has jurisdiction, and the Third Circuit has jurisdiction pursuant to 28 U.S.C. 1291 and 1292. See Prusky v. Reliastar Life Ins. Co., 445 F.3d 695 (3rd Cir.2006).

CONCLUSION

The Plaintiff request Leave to File a Notice of Appeal Pursuant to Fed. Rule of Appellate Procedure Rule 3(a), Rule 4(a)-4(c), because this Court has jurisdiction pursuant to 28 U.S.C. 1291.

Respectfully submitted

BY:

Darryl Orrin Baker
Darryl Orrin Baker
Reg. No. # 19613-039
Federal Prison Camp
P.O. Box 2000
Lewisburg, PA.
17837

EXECUTED: JANUARY 12, 2007